

(f) *How does this permit apply to oil and hazardous waste spills?* Prior to entering the location of an oil or hazardous material spill, you must obtain authorization from the U.S. Fish and Wildlife Service Field Response Coordinator or other designated Service representative and obtain permission from the On-Scene Coordinator. All activities within the location of the spill are subject to the authority of the On-Scene Coordinator. The U.S. Fish and Wildlife Service is responsible for the disposition of all migratory birds, dead or alive.

(1) *Permit provisions in oil or hazardous material spills.* (i) In addition to the rehabilitation permit provisions set forth in paragraph (b) of this section, when under the authority of the designated U.S. Fish and Wildlife Service representative this permit further authorizes you to temporarily possess healthy, unaffected birds for the purpose of removing them from imminent danger.

(ii) This permit does not authorize salvage of dead migratory birds. When dead migratory birds are discovered, a Service law enforcement officer must be notified immediately in order to coordinate the handling and collection of evidence. Contact information for your local Service Law Enforcement office is listed on your permit and on the Internet at <http://offices.fws.gov>. The designated Service representative will have direct control and responsibility over all live migratory birds, and will coordinate the collection, storage, and handling of any dead migratory birds with the Service's Division of Law Enforcement.

(iii) You must notify your issuing Migratory Bird Permit Office of any migratory birds in your possession within 24 hours of removing such birds from the area.

(2) *Conditions specific to oil and hazardous waste spills—(i) Facilities.* Facilities used at the scene of oil or hazardous waste spills may be temporary and/or mobile, and may provide less space and protection from noise and disturbance than facilities authorized under paragraph (e)(1) of this section. Such facilities should conform as closely as possible with the facility specifications contained in the Service pol-

icy titled *Best Practices for Migratory Bird Care During Oil Spill Response*.²

(ii) *Subpermittees.* In cases of oil and hazardous waste spills, persons who assist with cleaning or treating migratory birds at the on-scene facility will not be required to have a rehabilitation permit or be a subpermittee; however, volunteers must be trained in rescue protocol for migratory birds affected by oil and hazardous waste spills. A permit (or subpermittee designation) is required to perform extended rehabilitation of such birds, after initial cleaning and treating, at a subsequent location.

(g) *Will I also need a permit from the State in which I live?* If your State requires a license, permit, or other authorization to rehabilitate migratory birds, your Federal migratory bird rehabilitation permit will not be valid if you do not also possess and adhere to the terms of the required State authorization, in addition to the Federal permit. Nothing in this section prevents a State from making and enforcing laws or regulations consistent with this section that are more restrictive or give further protection to migratory birds.

(h) *How long is a migratory bird rehabilitation permit valid?* Your rehabilitation permit will expire on the date designated on the face of the permit unless amended or revoked. No rehabilitation permit will have a term exceeding 5 years.

[68 FR 61137, Oct. 27, 2003, as amended at 73 FR 59477, Oct. 8, 2008; 75 FR 29918, May 28, 2010]

Subpart D—Control of Depredating and Otherwise Injurious Birds

§ 21.41 Depredation permits.

(a) *Permit requirement.* Except as provided in §§ 21.42 through 21.46, a depredation permit is required before any person may take, possess, or transport migratory birds for depredation control purposes. No permit is required merely to scare or herd depredating migratory

²You can obtain copies of this document by writing to the U.S. Fish and Wildlife Service, Division of Environmental Quality, 4401 North Fairfax Drive, MS 322, Arlington, VA, 22203.

birds other than endangered or threatened species or bald or golden eagles.

(b) *Application procedures.* Submit application for depredation permits to the appropriate Regional Director (Attention: Migratory bird permit office). You can find addresses for the Regional Directors in 50 CFR 2.2. Each application must contain the general information and certification required in § 13.12(a) of this subchapter, and the following additional information:

- (1) A description of the area where depredations are occurring;
- (2) The nature of the crops or other interests being injured;
- (3) The extent of such injury; and
- (4) The particular species of migratory birds committing the injury.

(c) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, depredation permits shall be subject to requires, in this section:

- (1) Permittees may not kill migratory birds unless specifically authorized on the permit.
- (2) Unless otherwise specifically authorized, when permittees are authorized to kill migratory birds they may do so only with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or area described on the permit.
- (3) Permittees may not use blinds, pits, or other means of concealment, decoys, duck calls, or other devices to lure or entice birds within gun range.
- (4) All migratory birds killed shall be retrieved by the permittee and turned over to a Bureau representative or his designee for disposition to charitable or other worthy institutions for use as food, or otherwise disposed of as provided by law.
- (5) Only persons named on the permit are authorized to act as agents of the permittee under authority of the permit.
- (d) *Tenure of permits.* The tenure of depredation permits shall be limited to the dates which appear on its face, but in no case shall be longer than one year.

[39 FR 1178, Jan. 4, 1974, as amended at 42 FR 17122, Mar. 31, 1977; 63 FR 52637, Oct. 1, 1998]

§ 21.42 Authority to issue depredating orders to permit the killing of migratory game birds.

Upon the receipt of evidence clearly showing that migratory game birds have accumulated in such numbers in a particular area as to cause or about to cause serious damage to agricultural, horticultural, and fish cultural interests, the Director is authorized to issue by publication in the FEDERAL REGISTER a depredation order to permit the killing of such birds under the following conditions:

(a) That such birds may only be killed by shooting with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or areas;

(b) That shooting shall be limited to such time as may be fixed by the Director on the basis of all circumstances involved. If prior to termination of the period fixed for such shooting, the Director receives information that there no longer exists a serious threat to the area or areas involved, he shall without delay cause to be published in the FEDERAL REGISTER an order of revocation;

(c) That such migratory birds as are killed under the provisions of any depredation order may be used for food or donated to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes, but shall not be sold, offered for sale, bartered, or shipped for purpose of sale or barter, or be wantonly wasted or destroyed: *Provided*, That any migratory game birds which cannot be so utilized shall be disposed of as prescribed by the Director;

(d) That any order issued pursuant to this section shall not authorize the killing of the designated species of depredating birds contrary to any State laws or regulations. The order shall specify that it is issued as an emergency measure designed to relieve depredations only and shall not be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated pursuant to section 3 of the Migratory Bird Treaty Act.